



*Broadband/  
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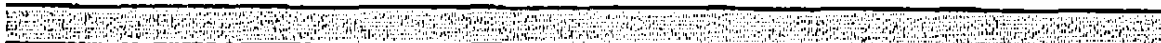
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CC Dkt. No. 01-338

CC Dkt. No. 96-98

CC Dkt. No. 98-147

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**TO:** Michael Powell, Chairman

**Company:** FCC

**Fax Number:** 202/ 418-2801

**Date:** October 23, 2002

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**To:** Michael Powell  
Chairman  
Federal Communications Commission

**From:** Eddie Edwards  
President and Chief Executive Officer  
OFS

**Date:** October 23, 2002

**Re:** Pending Broadband Regulations

CC Dkt No. 01-338

CC Dkt No. 96-98

CC Dkt No. 98-447

As the second largest global supplier and a leader in optical fiber, cable and component technology, OFS commends and supports the Federal Communications Commission's (FCC) efforts to reform outdated **U.S.** telecommunications laws. OFS is profoundly affected by severely diminished broadband investment and industry uncertainty resulting from these laws.

We **know** that by January, the **FCC** expects to act on three **proposals** for broadband regulatory reform centered around the Non-dominance **Proceeding**, the UNE Triennial Review Proceeding and the Defining **ILEC Internet** Access Proceeding.

We're concerned that the Commission's proposed regulations **fail to** differentiate between **new and** existing broadband deployment and between broadband and non-broadband services. Instead, the Commission appears focused **primarily** on the organizational nature of the service provider. We believe that moving forward **with** the regulations without addressing this distinction will be a policy mistake that will lead to further confusion, inequity and instability in the market.

In order to increase deployment of bandwidth to consumers and increase investment in bandwidth, regulations must be designed to minimize costs and difficulties associated with all new broadband deployments regardless of the organizational nature of the service provider. This goal can best be accomplished by deregulating **all** new broadband deployments.

Specifically regarding the three issues currently pending before the Commission:

### **1. Non-Dominance Proceeding**

We think the proposed rule questioning whether telephone companies should be considered "dominant" in the provision of broadband services is off-target. With digital

technology. all broadband services *are*, by their nature, information services. Digital voice, video, and data bits are indistinguishable. This reality *needs* to be reflected in the new regulations.

To date, incumbent carriers' (ILEC) legacy networks have provided only marginal advantage over telecommunications service competitors (CLECs and IXCs) given that ILECs must themselves invest in new equipment and open all their broadband facilities to competitors. **At the same time**, Cable Television organizations (MSOs), whose deployment of broadband is deregulated, have generated **true** facilities-based competition. ILEC telecom incumbency has not resulted in a broadband advantage **while** lack of regulation has given *MSOs* a significant broadband lead. By investing in broadband infrastructure, MSOs have achieved about **75%** market share in contrast to *the 25%* of the broadband market captured by telecom carriers.

Clearly, ILEC historic telecommunications dominance has not carried over into broadband dominance.

## **2. To what extent should ILEC competitors have the right to demand and receive unbundled "pieces" of the ILEC's network at special rates under the UNEs TELRIC pricing regulations?**

ILEC's historic dominance in telecommunications services and their existing access networks has led to the deployment of dial-up modem and broadband **DSL** services under UNE regulations. **As** a result, a large and vital CIBC and ISP industry has developed which provides significant competition among DSL, voice, **and** dial-up internet service providers **and** the associated consumer benefits of provider choice. This important industry **segment** is dependent upon using existing unbundled ILEC network elements based on TELRIC pricing.

**OFS thinks** that the current UNEs and TELRIC pricing **scheme** should be kept in place and not modified for all *non-broadband* telecommunication service applications **as** well as all *existing* broadband deployments where UNEs are already **being utilized**. **However**, since ILECs **are** clearly not dominant in broadband services and since existing UNE **and** TELRIC regulations only diminish investment in *new* broadband deployment, OFS supports creating a "carve out" from the status quo for all **new** broadband activity including converged voice, data, and video services. New broadband needs to be fully deregulated for *hue* facilities-based competition to develop rather than just consumer choice **among** service providers offering similar services on similar equipment (the current telecom competitive situation with CLECs offering TELRIC-based price and provider choice).

**As written**, the regulations make no distinctions between *new* broadband and existing broadband deployment and between voice and dial-up modem telecommunications services and converged voice, video, and data broadband information services. We strongly recommend deregulation of all **new** broadband deployment, regardless of

services carried, while maintaining the status quo on existing broadband and telecommunications services to ensure the survival of CLECs and ISPs.

### 3. Legal Definition of ILEC broadband services.

We believe that broadband is inherently an "information service" where all digital bits, whether voice, video, or data, are equal. This is distinct from traditionally defined voice-oriented telecommunications service where either analog or digital circuit-switched voice or dial-up data services are provided.

One of the greatest advantages brought by today's DSL and Cable Modem and tomorrow's Fiber-to-the-Home (FTTH) services is their ability to carry converged voice, video, and high-speed data services over a single network. While historic **ILEC** incumbent networks provide clear advantage in the provision of narrowband voice and dial-up modem telecommunications services, they provide no such advantage in the deployment of new converged voice, video and data broadband information services. Thus, though broadband information services **will** naturally include voice traffic, they are **quite** distinct from ILEC telecommunications services.

Therefore, OFS believes that any "converged" broadband service (i.e. where you have the capability for voice, video and/or high-speed data **sharing** the **same lines**) should be defined **as** an information service regardless of which converged **services** are offered.

We believe that **unless** the proposed regulations are modified to **make** a clear-cut distinction between new broadband and existing broadband services, both the telecommunications industry and its customers **will** be ill-served. Without the distinction, regulatory reform will be unable to achieve the goal of promoting new bandwidth deployment and broadband investment, and **will** significantly harm existing competition by impeding the ability of the CLECs and independent ISPs to remain in business.

Finally, while we believe that modification of the regulations to deregulate all *new* broadband deployment will go a long way toward improving the condition of the telecommunications industry, the proposed rules cover only a subset of the entire telecommunications policy dilemma. By excluding issues such as reciprocal compensation, interLATA data transport, state regulation of broadband **and** a number of other significant policy issues, the regulatory playing field still remains somewhat undefined. OFS believes the most effective path to necessary reform **is** for the Bush Administration to unveil a comprehensive high-speed Broadband policy that balances the needs of all parties and is designed to keep **the** United States at the fore of developing new broadband technology **and** applications

We appreciate your attention to our comments and would welcome the opportunity to discuss our concerns with you directly. I can be reached at 770/798-4265.